

*The 2nd Annual
Women in International Business Conference*

**“Understanding Global Markets –
International Law and Economic Issues”**

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International Trade: Minimizing Risks

- Cultural and Language Differences
- Legal Risks
- Political and Economic Instability
- Sharing of Proprietary Technology and Trade
- Commercial Credit Risk or Non-payment Risk
- Quality of Goods Risk
- Exchange Rate Risk
- Transport-related Risk

Entering the Global Marketplace

- Structuring International Transactions:
 - Business Considerations
 - International transaction as part of strategic development – define objectives
 - Desired level of control
 - Financial and human resources available to international transaction

Entering the Global Marketplace

- Structuring International Transactions (cont.):
 1. Direct Sales
 - a) Coping with U.S. Export Controls
 - i. The Export Administration Regulations (15 CFR 7) and the International Traffic in Arms Regulations (22 CFR 127.7) prohibit transactions involving:
 - Certain types of products and services
 - Certain people and other entities (i.e. Specially Designated Nationals, Denied Parties, etc.)
 - Certain countries
 - Certain product end-use
 - Transfer of technology and data (“Deemed Export”)

Entering the Global Marketplace

- Structuring International Transactions (cont.):
 2. International Agency and Distribution – limited degree of control
 3. Licensing Arrangements – a component of many market entry strategies
 4. Alliances and Joint Ventures – both parties share profits and losses
 5. Direct Investment in a Foreign Market – control is absolute, but high costs and risks
 - Branch Office
 - Subsidiary

Perils of International Transactions

- Choosing the Right Partner – Due Diligence
- Identify All Relevant Legal Regimens:
 1. The Law of the Target Jurisdiction
 - a) Local Counsel
 - Civil Law v. Common Law
 - b) Intellectual Property Protection – “first to file” rule in many countries
 - c) Tax Considerations – double taxation, PE, transfer pricing, etc.
 - d) Restrictions on Foreign Direct Investment or on Ownership
 - e) Securities Issues – “material” foreign operations trigger SEC disclosures
 - f) Local Labor Laws
 - g) Bankruptcy – some jurisdictions offer no recover protection
 - h) Governmental Oversight of Operations
 - i) Foreign Import or License Restrictions
 - j) Registrations or Approvals Required

Perils of International Transactions

2. International Law
 - a) Multilateral or Bilateral Agreements (e.g. United Nations Convention on the International Sale of Goods)
 - b) Supranational Organizations (WTO)
 - c) Trade Agreements (NAFTA)

Perils of International Transactions

3. U.S. Law Applicable to International Transactions
 - a) Export Administration Regulations
 - (1) The Export Administration Regulations restrict exports in accordance with U.S. national security and foreign policy objectives
 - (2) License requirements are dependent upon an exported item's technical characteristics, the destination, the end-user and the end-use

Perils of International Transactions

- b) Import Controls
 - i. The U.S. Customs Service regulates and imposes a duty on all merchandise coming into the U.S.
 - ii. The Office of Foreign Assets Control (“OFAC”) prohibits imports of goods, technology or services from embargoed countries or individuals involved in terrorism or narcotics trafficking
- c) Antitrust Laws (Hart-Scott-Rodino)
 - i. Under the Hart-Scott-Rodino Act, persons engaged in certain mergers, acquisitions or joint ventures must file notification with the Federal Trade Commission and the Assistant Attorney General and wait a designated period of time before consummating such transactions

Perils of International Transactions

d) Anti-Boycott Regulations

- i. Boycott Request: U.S. persons are prohibited from complying with a foreign government or foreign entity's demand to boycott a country deemed friendly by the U.S.
- ii. Disclosure: U.S. person who receives a boycott request from a foreign government or foreign entity must publicly disclose the request



Perils of International Transactions

e) Antidiversion Clause

i. Destination Control Statement

- a. Notice to the carrier and all foreign parties that the U.S. goods have been approved for export only to certain destinations and may not be diverted contrary to U.S. law
- b. Must be included on commercial invoice and bill of lading (or air waybill) for commercial shipments leaving the U.S.



Perils of International Transactions

- f) Foreign Corrupt Practices Act
 - i. Anti-bribery provisions: Prohibits bribery of foreign officials, political parties or candidates for public office for the purpose of obtaining or retaining business
 - ii. Accounting Provisions: Public companies must establish procedures to ensure accurate books, records and accounts
 - iii. U.S. parent company is responsible for activities of foreign subsidiaries



Perils of International Transactions

g) Money Laundering

- i. U.S. money-laundering laws prohibit a U.S. person from engaging in transactions that involve proceeds derived from criminal activity when such person knows that the proceeds are so derived and their owner intends to disguise the nature of the proceeds

h) Securities Issues

- i. Sarbanes-Oxley
- ii. Disclosure Requirements: If operations in a foreign country are deemed “material,” may trigger SEC disclosure requirements
- iii. A public offer of securities, even if made entirely overseas, may be subject to the securities laws of all jurisdictions that have a nexus to the transaction, including the U.S.



Perils of International Transactions

- i) Food and Drug Administration
 - i. The FDA regulates exports of food products, drugs and devices and cosmetics products
- j) Environmental Protection Agency
 - i. The EPA regulates the export of hazardous waste, pesticides, toxic chemicals, and ozone depleting substances

Negotiating the International Contract

- Choice of Law and Choice of Forum
- Confidentiality and Data Security
- Non-Competition and Antitrust
- Conflict Resolution (Conciliation, Arbitration, Litigation)
- International Payment Options
- Currency Exchange and Exchange Control
- Term and Termination
- Incoterms
- Communication Clauses

Negotiation Strategies

- The three Ps: prepare, practice, and participate
 - P³ mitigates gender and age-related barriers to international trade
- Maintain your personality and style while adapting to cultural differences
 - For example, acceptance of “femaleness” in Europe
- Establish your boundaries
- Take the long-view – it’s all about building relationships
 - For example, Europe is more relationship-based in its business dealings
- International trade is not limited to the exchange of goods and services, but extends to the exchange of values and business practices. It is an opportunity to extend ethical behavior, the rule of law and mutual trust and respect across international boundaries